



Operator Certification



Volume 2 Issue 1

Spring / Summer 1999

Defining Compliance

Appropriate Staffing Protects Public and the Operator

The Office of Operator Certification (OOC) recognizes that not all operators are able to personally attend conferences and conventions. This is the second in a series of articles outlining material presented by the OOC at conferences and conventions. A presentation outlining operator certification compliance is available through the OOC at any location showing sufficient interest.

Municipal officials are under constant pressure from residents to limit or reduce municipal budgets. More and more, officials look at cutting costs by cutting wastewater treatment plant operation and maintenance staff.

Optimal staffing maximizes a wastewater treatment plant's capability while inadequate staffing can potentially put water quality and public health at risk. Proper staffing also protects the financial investment of the People of California.

Technology, usually the SCADA system, has been touted as a budget savior to reduce plant personnel costs. But more technology does not always equate to less staff.

Operators are ultimately responsible and may be the first to realize that reduced staffing can lead to serious consequences. The ultimate result may be ongoing violations of waste discharge requirements and subsequent enforcement actions.

The regulations and the OOC do not address specific levels of wastewater plant staffing or even if a plant must be staffed. The regulations do address the appropriate grade level which an operator must hold while on the plant site. The regulations specify a wastewater treatment plant's classification and the operator certification level required whenever an operator is working at the plant site.

Every operator working at the wastewater plant shall possess a valid operator or OIT certificate. The Chief Plant Operator must hold a certificate at least equal to the plant class. Supervisors must hold a certificate no more than one grade lower than the plant class. Shift Supervisors must hold a certificate no more than one grade lower than the plant class, except in Class V Plants where a Grade III is allowed.

Job titles may not exactly match what the Regulations indicate. Generally the Chief Plant Operator is the Plant Manager, the Supervisor is the Assistant Plant Manager, and a Shift Supervisor is sometimes called a Lead-Person. The Supervisor is considered in responsible charge whenever the Chief Plant Operator is on vacation.

A person designated as a Shift Supervisor, or higher level, has authority to give operational or process direction at the facility and must always be on shift whenever operators are at the facility. The only exception to not having a person holding certification of a Shift Supervisor or higher level is when an agency has been given permission, by the OOC, to staff their facility with a Lone Operator.

The OOC has recognized that many agencies have limited budgets and will allow the use of a Lone Operator. A Lone Operator is defined as an operator with a certification level less than that of a Shift Supervisor and working alone, either on a regular shift or during call-out, at the treatment facility. The Lone Operator may NOT be an OIT and must have responsibilities and duties significantly less than a regular shift operator. The Lone Operator's duty statement must have well defined constraints and limits regarding duties and responsibilities that include little operational discretion. An agency **MUST HAVE** written permission from the Office of Operator Certification prior to implementation.

Prior to staffing with a Lone Operator, an agency must submit:

1. The Lone Operator and the On-Call Supervisor job descriptions or duty statements;
2. Updated work schedules;
3. On-Call list with a fail-safe contact procedure; and
4. The plant O&M Manual staffing recommendation.

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What To Do When You Get Caught Whistling On the Job

During the last several years, the Office of Operator Certification (OOC) has investigated numerous complaints, most of which originated from wastewater treatment plant operators or other employees working in the wastewater treatment field. The OOC is aware that, in most cases, the complainant, and the witnesses who cooperate with the government authorities during the subsequent investigation, may be subject to potential reprisals or discrimination by their employers.

These employees, often referred to as "whistleblowers," may be subject to harassment including intimidation, more careful monitoring by the supervisors, poor performance reviews, denial of certain assignments, transfer to different department, loss of certain privileges or benefits and termination.

The OOC does not have the authority or the means to protect a conscientious operator from reprisals for their whistleblowing activities. These activities can include communication with the media, regulatory or enforcement authorities, members of the Legislature, or environmental and special interest groups. Such activities are protected as long as the employee has reasonable grounds for believing that his information is correct. The Federal law covering whistleblowers at wastewater treatment plants (WWTP's) is the Clean Water Act (CWA).

Section 507 of the CWA states in part: *"No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or authorized representative of employees by reason of fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceedings under this Act, or has testified or is about to testify in any proceedings resulting from the administration or enforcement of the provisions of this Act."*

This language covers the employees of private industry and state and local government agencies working at wastewater treatment facilities who report violations of Federal and/or State regulations governing operation of the wastewater treatment facilities and compliance with the requirements of an NPDES permit.

The agency that investigates complaints filed pursuant to Section 507 is the Federal Occupational Safety and Health Administration (OSHA). The investigating procedure, described in 29 CFR Part 24, is available from either OSHA or the US Department of Labor.

An advantage to filing a complaint with OSHA is that the regulations require OSHA to complete the investigation within 30 days after it receives a complaint. In reality, a typical investigation will last somewhat longer, but the overall process is extremely efficient by government standards.

The downside of dealing with OSHA is that they will only investigate alleged violations of CWA, Section 507 that occurred during the 30-day period prior to the date the complaint was filed. In other words, if you complained on

May 31 that your employer has been harassing you since January 1, OSHA will only investigate those alleged violations which occurred during the month of May. It is possible that prior violations may eventually be considered as well; however, that requires appeal to the Administrative Law Judge. Appeals must be filed within five calendar days from the date you receive OSHA's initial decision.

Another advantage of filing a complaint with OSHA is that the process is relatively simple and usually does not require an attorney. You may hire an attorney if OSHA does not rule in your favor. However, you could end up paying attorney fees. Even if the attorney is working on a contingency basis, you are responsible for certain expenses (e.g. phone calls, copying costs, document filing fees).

To file a claim with OSHA, write to their main office at the San Francisco address provided below. Your letter should state the nature of the complaint (including the date(s) when the alleged retaliation occurred) and the person or agency against which the complaint is filed. You must also include the agency's phone number, address and the representative who has the authority to execute any potential agreements. For complaints that fall under the CWA Section 507, the letter must state that the complaint is being filed "under the provisions of Section 507 (a) of the Federal Water Pollution Control Act (33 USC 1367)."

If you are uncertain that the alleged reprisals fall under the Section 507 of CWA, you should call OSHA first and speak with one of their investigators.

In either case, you will be expected to document the incidents that led to the filing of the complaint. Documentation can be provided in the form of plant records, letters, memos, your personal diary and witnesses.

The more specific your documentation, the more likely it is that the investigator will rule in your favor. Also, have a prepared "wish list," a list of remedies that you want your employer to implement to correct the situation. This may require negotiation, so make certain you do not negotiate away the most important conditions.

Complaints filed under the CWA, Section 507, whistleblower protection statute, should be filed with the United States Department of Labor / OSHA, 71 Stevenson Street, San Francisco, Ca., 94105. Their phone numbers are (800) 475-4020, (415) 975-4342, and (415) 975-4318. Their fax number is (415) 975-4319.

Owners of Wastewater Plants Have Specific Reporting Duties

Section 3676, Title 23, Code of California Regulations (CCR), gives agencies owning or operating wastewater treatment plants specific reporting duties to the Office of Operator Certification (OOC). These requirements are designed to keep the OOC informed about major construction projects, key staffing changes and personnel actions which are related to an operator's duties.

Specifically, an agency must report the following within 30 calendar days of occurrence: 1. After a plant begins operation, the agency must submit a description of the treatment processes, the design flow of the plant, an organization chart and job descriptions and duties rosters for plant personnel; 2. Any change in the employment of

the person designated as chief plant operator; 3. Any construction affecting the classification of the plant.

If final disciplinary action is taken against any operator resulting in suspension, demotion, or discharge and the

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Emergency Regulations Expire for Operator's Proof of Citizenship

In May 1998 the State Water Resources Control Board (SWRCB) adopted regulations to prevent an ineligible alien from obtaining certification to work as a wastewater treatment plant operator. Persons wishing to become certified, or to renew their existing certification, were required to complete a "Statement of Citizenship, Alienage and Immigration Status for State Public Benefits," and provide specific documentation of their status.

On May 10, 1999, the emergency regulations expired and the SWRCB chose not to extend the requirement. Therefore, beginning on May 11, no one need complete the Statement or supply documentation of status. As you may know from newspapers and television, Proposition 187 (which restricts the provision of government benefits to illegal aliens) is before the California courts for review.

If the courts rule that we must re-introduce proof of status, we will inform you immediately. For those who already sent in the statement and documentation, your information is on file and you will not be asked again by the OOC. For anyone who has the information readily available, you are welcome to have us place it in our records and you also will

not be asked in the future. Staff of the Office of Operator Certification would like to thank everyone for the spirit of cooperation shown as we all attempted to implement the new requirement.

Training Directory Available

The OOC has released its 1999 Wastewater Opportunities Training Directory. This updated directory, originally published in January 1997, contains information on training requirements by grade, types of acceptable training and sources throughout the state. Copies may be ordered by calling the OOC at (916) 227-4300.

Administrative Actions by the State Water Resources Control Board

Administrative sanctions include fines, reprimand or denial, suspension, probation, or revocation of a certificate pursuant to Section 13627 of the Water Code and may be taken by the SWRCB against any person, agency, district, or other entity found in violation of specific sections of the Operator Certification Regulations or Water Code.

Actions Against Operator Certificates

The following are administrative sanctions taken by the SWRCB against California certified wastewater plant operators.

Stephen Sanchez

Name of Facility: Capistrano Beach Water District

Misconduct: Illegal Discharge

Discipline: Letter of Reprimand

The Division found that Mr. Sanchez allowed vactor truck washings to be discharged to an area not meant for disposal of wastewater or sewage sludge. The area where vactor truck

washings were being disposed had been previously used as sludge drying beds and had been abandoned.

It appeared that the situation was a standard operating procedure prior to Mr. Sanchez becoming the Chief Plant Operator.

Mr. Sanchez pled guilty to one misdemeanor count charged by the Orange County District Attorney.

The SWRCB's discipline took into consideration that Mr. Sanchez was court ordered to complete a 20-hour training course, volunteer 200-hours of community service time, serve a three-year probation, and pay a \$100 fine.

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disciplinary action is the result of the operator’s violation of grounds for discipline listed in Section 3710, Title 23, of the CCR. The operator may be subject to further discipline by the OOC. The notice given to OOC must identify the name of the operator or operator-in-training, the specific violations and the disciplinary action taken.

Included in the grounds for discipline are: Violating or causing the violation of OOC regulations; Operating or allowing the operation of a plant by an uncertified person or person of an inappropriate grade; Submitting documentation with false or misleading information; Using fraud or deception in the course of employment; Failing to use good care and judgment in the course of employment; Causing or

allowing the violation of waste discharge requirements; and, Failing to ensure the supervision of an operator-in-training.

How to Reach Our Office

Office of Operator Certification
Division of Clean Water Programs
State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120



Operator Certification	(916) 227-4300
Compliance Complaints	(916) 227-4362
Newsletter Suggestions	(916) 227-4362



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